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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,377	03/20/2002	Fabio Longoni	019B.0022.U1(US)	9743
29683 7590 04/01/2009 HARRINGTON & SMITH, PC 4 RESEARCH DRIVE, Suite 202 SHELTON, CT 06484-6212				
EXAMINER				
SOBUTKA, PHILIP				
ART UNIT		PAPER NUMBER		
2618				
MAIL DATE		DELIVERY MODE		
04/01/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/980,377

**Applicant(s)**

LONGONI ET AL.

**Examiner**

PHILIP J. SOBUTKA

**Art Unit**

2618

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5, 8-16, 19-26, 28, 71, 92-94 and 98-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 8-16, 19-26, 28, 71, 92, 93, 99 and 101 is/are allowed.
- 6) ☒ Claim(s) 94, 98, 100 and 101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :03/09/2009, 11/24/2008, 10/29/2008.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed March 9, 2009 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 94,98,100,101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson et al (US 6,085,107) in view of Butovitsch et al (US 6,259,927)

Consider claim 94. Persson teaches a network comprising a first station (Base stations, see figures 2, 7a-c) and a plurality of second stations (Mobile stations, MS see figures 2,7a-c), said first station being arranged to transmit different information intended for different second stations on a common CDMA channel (CDMA see column 4, line 50 – column 5, line 14), said first station having a mode of operation in which said first station is arranged to transmit information intended for different second stations on the common CDMA channel at different power levels (different power levels for each station, column 3, lines 38-46, column 4, lines 55-60), said network further comprising a radio network controller (RNC see figures 2, 7a-c, column 4, lines 60-65).

Person lacks a teaching of the controller arranged to supply power information to said first station as to the power to be used for said information. Butovitsch teaches using an RNC to control power (power control see figure 1, column 7, lines 15-45). Butovitsch teaches that RNC control improves performance during soft handoff (Butovitsch, column 6, line 48, - column 7, line 16). Therefore it would have been obvious to one of ordinary skill in the art to modify the arrangement of Persson to allow for RNC control of power setting in order to improve performance during soft handoff as taught by Butovitsch.

Consider claim 98. Persson teaches a method comprising transmitting information by a first station (Base stations, see figures 2, 7a-c) to a plurality of second stations (Mobile stations, MS see figures 2,7a-c) on a common CDMA channel (CDMA see column 4, line 50 – column 5, line 14), different information being intended for different stations, wherein said information intended for different second stations are transmitted at different power levels (different power levels for each station, column 3, lines 38-46, column 4, lines 55-60).

Note that Person teaches a radio controller (RNC see figures 2, 7a-c, column 4, lines 60-65). Person lacks a teaching of the controller arranged to supply power information to said first station as to the power to be used for said information. Butovitsch teaches using an RNC to control power (power control see figure 1, column 7, lines 15-45). Butovitsch teaches that RNC control improves performance during soft handoff (Butovitsch, column 6, line 48, - column 7, line 16). Therefore it would have been obvious to one of ordinary skill in the art to modify the arrangement of Persson to allow for RNC control of power setting in order to improve performance during soft handoff as taught by Butovitsch.

Consider claim 100. Persson teaches an apparatus comprising:  
information in the form of frames is transmitted by a base station (Base stations, see figures 2, 7a-c) to a plurality of user terminals (Mobile stations, MS see figures 2,7a-c) on a common channel (CDMA see column 4, line 50 – column 5, line 14), with different frames of said information being intended for different user terminals;

such that said different frames of said information intended for different user terminals are transmitted by the base station at different power levels (different power levels for each station, column 3, lines 38-46, column 4, lines 55-60).

Note that Persson teaches a radio controller (RNC see figures 2, 7a-c, column 4, lines 60-65). Persson lacks a teaching of the controller arranged to supply power information to said first station as to the power to be used for said information. Butovitsch teaches using an RNC to control power (power control see figure 1, column 7, lines 15-45). Butovitsch teaches that RNC control improves performance during soft handoff (Butovitsch, column 6, line 48, - column 7, line 16). Therefore it would have been obvious to one of ordinary skill in the art to modify the arrangement of Persson to allow for RNC control of power setting in order to improve performance during soft handoff as taught by Butovitsch.

Consider claim 101. Persson teaches an apparatus comprising: a transmitter (Base stations, see figures 2, 7a-c) configured to transmit information in the form of frames to a plurality of user terminals (Mobile stations, MS see figures 2,7a-c) on a common channel (CDMA see column 4, line 50 – column 5, line 14), with different frames of said information being intended for different user terminals and transmitted at different power levels (different power levels for each station, column 3, lines 38-46, column 4, lines 55-60); and a receiver for receiving power levels for respective frames from a radio network controller for the power with which said respective frame for a respective user is to be transmitted.

Note that Person teaches a radio controller (RNC see figures 2, 7a-c, column 4, lines 60-65). Person lacks a teaching of the controller arranged to supply power information to said first station as to the power to be used for said information. Butovitsch teaches using an RNC to control power (power control see figure 1, column 7, lines 15-45). Butovitsch teaches that RNC control improves performance during soft handoff (Butovitsch, column 6, line 48, - column 7, line 16). Therefore it would have been obvious to one of ordinary skill in the art to modify the arrangement of Persson to allow for RNC control of power setting in order to improve performance during soft handoff as taught by Butovitsch.

***Allowable Subject Matter***

5. Claims 16, 19-26, 28, 71, 93, 99 and 102 are allowed.

***Response to Amendment***

6. Applicant's arguments with respect to claims 94, 98, 100 and 101 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. SOBUTKA whose telephone number is (571)272-7887. The examiner can normally be reached Monday through Friday from Monday - Friday, 8:30am - 5:00pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-41774711.

9. The central fax phone number for the Office is 571-273-8300.

Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number.

**CENTRALIZED DELIVERY POLICY:** For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip J Sobutka/  
Primary Examiner, Art Unit 2618

(571) 272-7887